SINGAPORE REPORTS.

GOH SUAT NEO *(w)* v. W. ROBERTS & ORS.

[Orig. Civ. Juris. (Evans, J.) September 13, 1950]

[Singapore — Suit No. 164 of 1950]

Landlord and tenant—Tenancy—Whether occupants of premises are tenants or lodgers—Control of Rent Ordinance, 1947, s. 18A.

In this case the plaintiff sought possession of a house known as No. 130 Sophia Road from the eighteen defendants who all resided in that house. The premises had been let by the plaintiff to one The Phik Ho and an order for possession had been obtained by the plaintiff against him. That order was not enforceable against sub-tenants. The plaintiff claimed that the defendants were not sub-tenants but only lodgers of the former tenant.

Held, (1) that in this case there was evidence that the defendants had exclusive occupation of their rooms and that their landlord had acquiesced in his exclusion from those rooms and therefore the defendants were tenants and not lodgers; (2) that the plaintiff was therefore not entitled to an order for possession against those of the defendants who had gone into possession of their rooms prior to the departure of the principal tenant.

Cases referred to:—

(1) *Ng Kim Seng v. Tay Siong Chuan* (1949) M.L.J. 55.
(2) *Smith v. St. Michael, Cambridge* 3 E. & E. 383.
(3) *Monks v. Dykes* 4 M. & W. 567.
(4) *The Queen v. St. Georges Union* L.R. 7 Q.B. 90 at page 97.
(5) *Allan v. Liverpool* L.R. 9 Q.B. 180.
(6) *Kent v. Fittall* (1906) 1 K.B. 60.
(7) *Bradley v. Baylis* 8 Q.B.D. 195.
(8) *Douglas v. Smith* (1907) 1 K.B. 126.
(9) *Helman v. Horsham and Worthing Assessment Committee* (1948) 2 All E.R. 588 at page 591.
(10) *Helman v. Horsham and Worthing Assessment Committee* (1949) 1 All E.R. 776 (C.A.).
(11) *Westminster Corporation v. Southern Railway Co.* (1936) 2 All E.R. 322.
(12) *Kent v. Fittal* (1911) 2 K.B. 1102 at page 1109.

CIVIL SUIT.

L. A. J. Smith for the plaintiff.

D. S. Marshall for the defendants.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

Evans, J.: — The plaintiff is seeking possession of a house known as 130 Sophia Road from the eighteen defendants who all reside in that house. Hilda and Dudley Roberts reside with W. Roberts and Agnes Chan with Owen Chan. There are, therefore, fifteen possible tenancies involved. The premises were let by plaintiff to one The Phik Ho against whom she obtained an order for possession from this court on 28th April, 1949. That order was not enforceable against the sub-tenants, whatever exactly that term may mean. The defendants claim to be sub-tenants, and the plaintiff contends that they are but lodgers of his former tenant. Whichever they might be there is a separate letting to each, and a separate contractual relationship. These are made no clearer by proceeding against all at once. No objection has been taken to this proceeding, and the evidence of each has been tendered as relevant in part to all. Chan Aik Huat has occupied the servants' quarters detached from the house, and Owen Chan and his wife have occupied a garage and syces room attached, but also detached from the house. The letting of such premises might well be very different from the letting of an internal room, and such rooms may differ among themselves. I propose however to treat all as let in the same manner.

The Phik Ho is not now in the Colony and neither he, nor his wife, who seems to have assisted in the management of the premises, was called. The plaintiff called the plaintiff's brother-in-law one Ong Eng Hing who manages her affairs, but who, naturally knows nothing of any arrangements between defendants and the mesne tenant. He gave some evidence of how the house was run, of the presence of an office in the hall at which business books and a book of lodgers going in and out were kept, and more evidence of the earlier action when possession was claimed on the ground of receipt by the tenant of rents exceeding in all 75% of the rent he paid. That action he said was in fact compromised, because of doubts as to the sub-letting, and he accepted a postponement of possession, to the end of January, 1950. The case *Ng Kim Seng v. Tay Siong Chuan*[1] was decided in the District Court on 24th November, 1948, and was affirmed on appeal on 16th February, 1949. Ordinance No. 10 of 1949, to which I shall return and which was passed to reverse that decision, took effect on 30th March, 1949, but the result of this confusion may not have been clear, nor the meaning of the Ordinance at once apparent when this compromise was negotiated. The claim to immediate possession was certainly abandoned. Much evidence was given regarding conversations this witness had with different defendants at the time of

this case, but nothing was done to render that evidence in any way relevant. It was suggested that he called The Phik Ho a bloodsucker, and that he spoke of reducing rents. Supposing he were an agent to do anything of the kind, no language amounting to a promise was proved, and still less any consideration whatever therefor. I shall ignore this part of his evidence. Evidence as to the trial would be relevant to defendants' plea, that the plaintiff is attempting to approbate and reprobate, but it is not necessary to consider that plea beyond saying that it would have seemed to me doubtful whether it could be properly pleaded here. Defendants' counsel admitted it depended on a tenancy existing and, therefore, is no defence in itself.

The plaintiff also called the Acting Aliens Registration Officer of the Criminal Investigation Department who produced returns made by J. C. Corera (tenth defendant) under section 10(e) of the Registration of Aliens Ordinance, 1940, in respect of 130 Sophia Road for September 1949 and January 1950, and who stated that throughout his ten years' experience this house had been a lodging house. The return is under section 10 applicable to hotel keepers and others, and not under section 11 which applies to householders. The application of section 10 is more particularly defined in sub-section (4) as to premises, "whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward." In fact it throws no light on the nature of the letting or providing, nor can this witness's opinion be relevant. The question at issue must turn on the relationship created between the parties.

The returns produced throw some light upon this matter, and being an official return tendered by the plaintiff and drawn by a defendant, I think I can treat its contents as true for the purposes of this case. The house is said to have had eight rooms, but these were later subdivided. The Phik Ho, the tenant, is said to have occupied two on the first floor and one on the ground floor. He is said to have left Singapore in about October. The September list shows thirteen tenancies, of which seven were created within six months of the liberation, and four within the last four months. The January list shows fifteen tenancies, the difference being possibly the rooms vacated by The Phik Ho, and only three new arrivals, dating from 30th October, 15th December and 17th January. The collection of rents would entail some work, and receipts seem frequently to have been given by Mrs. The Phik Ho, but there is no evidence here of coming and going, nor of other clerical work necessitating an office of any kind.

The evidence as to the relationship is all one-sided — it is all from the defendants and not all defendants were called. Those called produced receipts accepted by them and purporting to be in nearly every case for rent of such a room. In 1948 a printed form of Rent Receipt was used, and in other cases 'rent' was written in. In one case of first defendant the receipt is of "rent and other charges for January 1949" written by Mrs. The Phik Ho, while in one case of Ahmed bin Hussain, it is for "Lodging charge for October 1949 Room No. 10", but this receipt is not made out by the other party to the relationship — The Phik Ho — but seems to be signed by J. C. Corera the tenth defendant. The words 'let' and 'rent' are frequently used in connection with letting of lodgings, and their use has never been held conclusive. This consideration applies both ways.

The defendants all claim to have had exclusive possession of their rooms. They were asked if the agreement consisted in more than a promise to pay such and such sum for the rooms, and they admitted it did not. This is quite inconclusive. The full meaning of such words may depend on the shop in which the speaker is standing, the goods he is holding, or the empty house he is looking at, and truly depends on the arrangements the parties contemplate, the whole matter in question. They were supplied with electric light and they had access to water, to bath and lavatory accommodation, all in common. They certainly had access by the back door, and by all stairs and passages, and there is no evidence of such access being in any way limited or restricted. The three Chans had full liberty of access to separate buildings. All defendants who were asked professed to clean their own rooms, one had had a servant living in and one employed a visiting cleaner.

Various tests seem to have been used to distinguish tenants from lodgers. An upper chamber may be a mansion or tenement, a proposition ascribed to Lord Coke (3 Inst. 65) where he speaks of burglary. In *Smith v. St. Michael, Cambridge*[2], a rating case, where an agreement in the form of a tenancy bound the householder to provide gas, wood, coals, and a trustworthy person to reside on the premises, to keep clean, light fires and attend to the same, the householder was held to remain in occupation of the whole. In *Monks v. Dykes*[3] the determinative factor seems to have been thought to be the retention of the key of the outer door, but the judgments are vague. This test seems to have been an old and accepted one. In *The Queen v. St. Georges Union*[4], another rating

case concerning the Westminster Chambers let in self-contained suites as residences or offices, there was much discussion regarding the key of the outer door kept by a porter hired by the owners, but employed as the servant of the occupiers. The owners there also provided water for the whole building and gas for staircases, halls and passages. Cockburn, C.J. said :—

"It is necessary to establish some criterion, and it is not always, perhaps, very easy to find one; but the one which has been adopted in such cases, and which is, perhaps, the most convenient, and the only one, is whether the landlord retains the control of the outer door, and has shewn by his retaining the control of the outer door that he has control of the whole of the premises; so that, although he may be liable to an action upon the breach of his contract to allow the tenant to occupy a portion of the premises so let to the tenant, yet the tenant could not maintain trespass against the landlord, because the landlord has retained in himself the dominion and control over the whole of the house. I think the possession of the street door may be taken as a criterion, because it is only by the landlord opening and shutting the street door, or allowing it to be opened and shut for the ingress and egress of the tenant, that the tenant can have the enjoyment of the premises.

If in the present case, I could see that the landlords had retained the exclusive control of the outer door, so that the tenants could only come in and go out with their assent and permission; then it might be said that these persons were mere inmates or lodgers, and not the lessees of the respective tenements. In order to determine that question it is necessary to look at the agreements."

The judge went on to discuss the agreement which had all the characteristics of a lease, but such discussion has no application here. Lord Blackburn (then Blackburn, J.), said :—

"The question, therefore, is, are these sets of chambers separately occupied? I take it that there is no doubt, in point of law, that the landlord or the owner of the fee-simple of an entire house may, if he pleases, agree with another that he will let him a portion of the house, and a portion only. But whether he does so agree or not depends upon the terms of the agreement. If it is in writing we can judge of the terms of it; if it is not in writing, and the letting is by parol, we must gather the terms of the agreement from the different matters of fact given in evidence to shew whether or not the agreement was such as to put the lessee in exclusive occupation, or merely an agreement to let to him as a lodger or inmate, the occupation of the whole of the house being retained in the landlord."

He then refers at length to the *Cambridge case* above in which he had been one of the judges, where the owner's access at all times to all rooms seems to have been the test, and he goes on to consider the agreement in the case before him to see if the occupier had exclusive possession. The same judge reverted to the same test in *Allan v. Liverpool*[5], speaking of the lodging house keeper having access to look after the house and furniture, but it may be doubted whether this is a conclusive test, or could be followed in modern lettings with services covenanted for or understood.

Kent v. Fittall[6] was a franchise case, as was the second case of the same name, both under the Act of 1867 which made being rated a qualification for the franchise. The cases turned, therefore, first on the Representation of the People Act, 1867, and then on Acts relating to Rating and Registration. The Rating Acts had drawn a distinction between a single dwelling house let out in parts, and a dwelling house in which the owner resided and let out part, or parts, to others. These cases concerned a case of the latter kind. The facts were fully found by the revising barrister, and are apposite to our case. The use in common of the courtyard, wash house, and water closet therein were let to the residents. The owner's use and control of these parts was identical with that of his tenants, and he did not reserve any general right of control over the premises. The cleaning of passages and staircases was shared in common by those using the same. The owner did not, nor had any rignt to, enter, nor exercise any control over the room let. All the Lord Justices agreed that this was a clear finding that the owner had no control over the parts let. *Bradley v. Baylis*[7], an important decision by a Court of Appeal of the Master of the Rolls and four Lord Justices in which it was held that, if the owner resides on the premises, he retains the mastership of his own house, and the other residents are mere lodgers, was discussed at length. All the judges held that this was *prima facie* the case, but that in this case they were bound by the finding that the owner had parted with the control, and that the other residents were occupying as tenants; in *Kent v. Fittall*[6] Collins, M.R. said (page 69) :—

"It seems to me on principle that it cannot be affirmed as a matter of law that the co-existence of the landlord as an occupier of another and a distinct subject-matter is a bar to the claim of the tenant to a separate tenancy, any more than if the landlord lived next door or in the next street. The law has created a thing which is capable of being the subject-matter of a separate tenancy, and the only bar to a claim in respect of it is that it has not been occupied in such a way as to shew that the occupation has been free and uncontrolled. The occupation may be subject to stipulations, such for instance as would give the landlord a right to enter the tenement for the purposes of repair; but that is compatible with an independent occupation, such as would give the franchise to the tenant, and that is the occupation that the revising barrister has found to exist in this case.

That being, in my view, the broad principle upon which this case depends, we have been pressed with authorities, notably the case of **Bradley v. Baylis**, and an argument has been founded on observations in that case which invites us to hold that as a matter of law the dwelling-house franchise cannot exist where the landlord dwells in the same house. It appears to me that a critical examination of what was said by the learned judges in that case negatives this contention. Each of them in every reference to the residence of the landlord couples with that reference some statement indicating control by the landlord, and it seems to me that the question treated as vital by all the judges is that of control."

Romer, L.J. said (page 76) :—

"In my opinion the essential point to consider in cases like the present is the right of control on the part of the landlord."

Mathew, L.J. said (page 77) :—

"It is said that we ought not to act on them (findings) because the revising barrister disregarded an imperative rule of law, to the effect that there cannot be exclusive occupation of a room in a house if the landlord lives in another room, or rooms, of the house. In my opinion that is incorrect, and extraordinary results would arise if the residence of the landlord in the house were the conclusive criterion of whether the other inmates had separate occupation of other parts of the house. If the whole of a house were let in separate tenements, and one room became vacant, and the landlord took up his residence in that room, the rest of the inmates would no longer have the position of inhabitant occupiers and would lose the franchise, although there had been no alteration in their agreements of tenancy."

In the second case the facts were differently found. No mention was made of the premises held in common which were, as will be seen, irrelevant to the purpose there. It was found that the landlord claimed no right to enter into or exercise control over the rooms, nor did he in fact ever exercise such rights. It will be seen how slightly this finding differs from the earlier in which it was found as a fact that the landlord had no such right. The case came before a Divisional Court of which two judges had sat in the earlier case, and one Darling, J. had since explained his view of the earlier case, in *Douglas v. Smith*[8]. The facts that the house was a dwelling house in which the owner resided, and paid the rates, were sufficient to raise a presumption, and these cases show how strong, that he retained control of his own dwelling and that other inmates were lodgers. There was here no finding that he had renounced such right of control. The third judge was Lord Sterndale (then Pickford, J.,) who cited parts of the passages from the judgments of Collins, M.R. and Mathew, L.J. set out above, and went on with reference to the case before him..... "the landlord had never communicated to the inmates that he claimed the right to exercise control. Then the question is whether the barrister has arrived at his conclusion by a misdirection when he holds that the facts afford evidence of a renunciation of control. I think that he has. The mere fact that the landlord expressed no intention of reserving that which remained in him until he renounced is no evidence that he intended to renounce it." The voters' disqualification was upheld in the Court of Appeal on grounds of the absence of rating qualification.

Helman v. Horsham and Worthing Assessment Committee[9] was again a rating case, and came before a Divisional Court consisting of Lord Goddard, C.J. and Singleton and Slade, JJ. of whom, according to the report, the first alone gave a judgment of any detail. The premises were a dwelling house in which the owner himself occupied three rooms and a kitchen-scullery on the ground floor, and one room on first floor. The other occupier had two rooms and a kitchen-scullery on the first floor, with the right to use in common with the owner the combined bathroom and water closet on that floor, the upper landings, the entrance hall, front and back doors, the yard and outside water closet with a right of passage thereto as and when required through the ground floor rooms. The assessment committee assessed the house in two parts and the owner appealed. Unfortunately the case is badly reported. The learned Lord Chief Justice is represented as discussing *Bradley v. Baylis* of 1881 with reference to the Representation of People Act 1918 and the first allusion to *Kent v. Fittall* seems clearly to be to the earlier case, though the reference of the second alone is given.

Lord Goddard went on to cite, first, a passage from the judgment of Blackburn, J. in *Allan v. Liverpool* (also wrongly cited in the report), including the passage cited above, and then the opening words of Lord Sterndale's judgment in the second *Kent v. Fittall*. He went on :—

"In the present case we have, among other things, the fact that there was a bathroom in this house and that that bathroom was to be used both by the landlord and by Miles. The assessment committee, in treating these premises as two separate hereditaments, did not apparently, include the bathroom. They have taken as one hereditament the two rooms on the first floor, with what is called the kitchenette, and attributed that to one hereditament, and to the other hereditament they have attributed the other room on the first floor and the rooms on the ground floor. I do not suppose they intend the bathroom to be treated as a separate hereditament in itself. They have simply ignored it, but Miles is given the right to use the bathroom, and that does not mean he is to have the exclusive use of it. The control of the bathroom remains in the appellant, and there is nothing which I can see which goes to show that the appellant, who is living on the premises and has certainly only parted with — I am using that phrase in the popular, and not in the strictly legal, sense — two rooms and a kitchenette (which may for all I know be nothing more than a room with a cupboard and a gas stove in it), intended to part with the general control of those premises." ....."the position is this. Although the presence of the landlord in the hereditament is not of itself conclusive that the other occupant must be a lodger, it is not only a fact of great weight but is also one which calls for the production of further facts which show that the landlord has renounced the right of control in the house, and it is on that point I think that quarter sessions have gone wrong. I can find no fact found which suggests that the landlord has renounced his control over these premises. In fact, I think the facts found indicate that the landlord has not renounced his rights over the premises. Moreover, if it was intended to vest an estate in Miles, giving him certain rights in the nature of an easement for the better enjoyment of what had been demised to him, it is most unlikely that that would have been done by a merely verbal agreement even although it was only a weekly tenancy."

The other judgments do not call for consideration.

The decision was appealed, and came before a Court of Appeal consisting of Bucknill, Evershed, and Denning, L.JJ.[10].

It will be seen that the whole basis of the Lord Chief Justice's criticism of the decision before him lay in the existence of these portions of the premises used in common. This is the crux of the difficulty and was "overcome" by the assessment committee by conveniently ignoring it. In the franchise cases this difficulty did not arise, because the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c.26 s.5), provides that :—

"Where the occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part."

In the first *Kent v. Fittall*[6] similar joint users were found but not relied on, in the second they were ignored. In both, the courts concerned themselves only with the rooms of which the occupiers had at least exclusive use, and based the qualifications thereon. The two judges in the Divisional Court agreed with the Lord Chief Justice but gave judgments which, like the assessment committee, ignored the main point. In the Court of Appeal all the Lord Justices according to the report would seem to have adopted the same struthious attitude. Bucknill, L.J. reviewed most of the cases now referred to and came, as it would seem, to the only possible conclusion. Evershed, L.J. confined his discussion to two or three of these and relied chiefly on Lord Russell of Killowen's judgment in *Westminster Corporation v. Southern Railway*[11] where the law seems to me to be stated to the same effect, if not in the usual phraseology. This last fact is not, perhaps, surprising as the case has no reference to a dwelling in which the owner lives, nor to a dwelling house or other inhabited premises at all, but to business premises on railway property. It might be thought to be to a large extent *obiter*. His Lordship does seem to glance at the difficulty for a minute saying (page 782):—

"Is it right that the intended relationship between householder and 'inmate' depends on structural severance or that the extent of structural severance should necessarily determine what that relationship should be taken to be? Is a sharing of the front door and staircase or (in addition) of a garden or a downstairs cloakroom decisive of the character of the relationship for some, and what, purposes? Therein is a prospect of almost endless controversy and litigation and no clear standard for decision."

With all due respect the cases seem to show nothing of the kind; as his own subsequent remarks show, they turn on control, on the arrangements, and, fundamentally, on the intentions of the parties. Structural severance is not necessary, but it has the undoubted advantage of making the position clear. There seems no more endless controversy than is incident to leaving persons free to make their own contracts, or, for that matter, their own wills, and then to squabble as to the meaning, instead of imposing some rigid and invariable way of life upon them. He goes on a little later (page 783) :—

"If in the present case Miles, when going away for a week-end, is entitled to lock his doors and say to Helman: 'I do not want either you or any one else to go into my rooms while I'm away', then he has, **prima facie**, such exclusive occupation of his **rooms** as would be consistent with a tenancy, but inconsistent with the position of a lodger."

This would seem clearly in accordance with the law to be found in the cases, subject perhaps to this, that it would be true if the owner did not live on the premises, and, if he did, would have to be weighed in the light of all circumstances as to how far it rebutted the presumption arising from the owners residing on the premises. With all respect to the Lord Justice it seems to have little to do with the case before him. To enable the court to confine its attention in this way to the rooms, statutory authority seems to have been necessary in the franchise cases. The holding in question is not one of three rooms but of the occupation of rooms plus many other undefined rights, and the interest must be regarded as a whole. So far as I can understand his judgment, the Lord Justice finds the law in the same sense as the Lord Chief Justice and Bucknill, L.J. At the same time he seems to wish to agree with an opinion of Denning, L.J., which is not clearly set out in the latter's reported judgment, that as between Helman and Miles the latter is a tenant and for all other purposes he is a lodger, from which it would follow that he might treat his landlord as a trespasser but no one else, a strange position for which no reason is given.

Denning, L.J. reviewed a large number of older cases, but, as reported, this review is so brief as to be difficult to understand. He is represented as referring to some party in *Monks v Dykes*[3] as a tenant, whereas throughout the case defendant is referred to as a lodger, and *quare clausum fregit* is not mentioned because the trespass sued upon was to the person. In the result the Lord Justice seems to agree with the Lord Chief Justice. I have gone into the earlier law at some length because of the obscurity of these judgments. The law as I understand it and apart from these two judgments, is that a lodger has exclusive use of the premises let to him subject to the owner's access and control, while a tenant has exclusive occupation, but if

the whole premises be a dwelling house in which the owner himself resides, then although he seems to have given exclusive occupation, a strong presumption arises from the owner's presence that he has retained a paramount control and the inmate remains a lodger unless the evidence goes further and shews a renunciation of such control by the owner. If therefore the inmate's use or occupation includes premises used with the owner, the owner probably retains control of these premises, and that fact must affect the character of the inmates composite holding.

The Rent Restriction Acts were drawn with little regard to the phraseology used in these cases. The acts are confined to houses let as separate dwellings. These acts differ so widely from our law that it is unnecessary to consider them. The Rent Control Ordinance applies to all tenancies of premises, and premises include part of any premises let or sublet separately. It was this provision that was considered in the case of *Ng Kim Seng v. Tay Siong Chuan*[1] when the court followed the decisions on the English Acts. The earlier and more general law was not explicity referred to, as it was unnecessary to go beyond the words of the Ordinance, but these decisions were in general accord therewith.

The Legislature then hastily passed Ordinance No. 10 of 1949 which adds a section to the Control of Rent Ordinance, 1947.

"18A. Where a tenant has the exclusive occupation of any separate accommodation and the terms on which he holds such separate accommodation include the use of other accommodation which is shared in common with any other person including the landlord then such separate accommodation shall be deemed to be let or sublet separately, and the separate and shared accommodation shall both be deemed for the purposes of this Ordinance to be premises comprised in the tenancy."

This provision bears some resemblance to that cited from the Parliamentary and Municipal Registration Act, 1878, but goes further. For this reason I have considered this case as the courts considered the franchise cases, regarding, in the first place, the holding of the rooms alone. There is no evidence of the leaseholder having provided any services, not even the rough cleaning. The tenants seem to have done all such work for themselves. Of the nine examined all professed to lock their doors against the whole world, and five expressly stated that they had fixed and used locks of their own. One of these George Herbert Blok had a ground floor room with an exterior door on which this lock was fixed, but he professed to keep the internal door 'locked on the inside. There is no reason not to accept these persons' evidence on this point. All inmates had access by the back door and there is no evidence that such access was ever hindered or could be hindered. A key is at least a symbol of possession and control, and in many circumstances its delivery would be a delivery of control. In the case of inmates of a house a key may be given and its surrender asked, or expected, whenever that person leaves, or a key may be given and a duplicate retained. There is no evidence of any key being given by the leaseholder to the inmates. This might indicate no renunciation of control, but, even were this so, the evidence of fixing a private lock is very strong. If the landlord exercised any control or supervision he must very soon have known of this act which he might well regard as a trespass, or as an attempt to oust him. He would seem to have acquiesced, and treated this act as in accordance with the arrangements made between the parties.

The fact that similar evidence is not given in respect of every room is not significant. The arrangements are treated as uniform, and whether or not some tenants so asserted their exclusive occupation and control, is immaterial provided that there is evidence that they might have done so had they wished. Treating the subject of the letting piecemeal there is in my opinion in this case not only evidence of exclusive occupation by the tenants, but also of a renunciation of control over the rooms by the owner of the leasehold interest from whom they claim.

Turning now to the new section 18A, this would seem to beg the question, making no attempt to define lodger, or tenant, but beginning by assuming a "tenant", a term defined by the principal ordinance and restricted to cases where the relationship of landlord and tenant exist. There would thus be a complete circle in speaking of a tenant having exclusive occupation of separate accommodation for this is itself

the badge and sign of a tenant. It is therefore, impossible to make sense of this section unless "tenant" be read as "person", and this I think the court would in the circumstances be justified in doing. Nor does this section draw any distinction between premises on which the owner is resident and those on which he is not resident, although, according to Denning, L.J., such a distinction has been drawn since the days of Lord Holt. Read in the way I should read it, the section would cover both cases. Although the practical application of the law to infinitely varying cases may be at times a matter of some difficulty, yet, apart from the Court of Appeal judgments in *Helman v. Horsham and Worthing Assessment Committee*[10], the law seems to have been clearly and consistently laid down. This section not only ignores the differences therein between tenant and lodger, but it also deals with what I described as the crux of the difficulty in a manner different from that of the former English franchise law. That law proceeded on a consideration of the rooms of which there was exclusive use, and ignored the rest of the inmates' composite holding. A lodger's rights are contractual only, and the position is then clear enough. A tenant has an interest in the land in addition to his contract. In *Helman v. Horsham and Worthing Assessment Committee*[9], Lord Goddard refers to this other interest as in the nature of an easement. There are no closed categories of easements. There can be an easement of less than freehold, or over and attached to a term of years, provided it be created by deed. This section evades also the far greater difficulty of determining or defining such real right, it clearly does not purport to vest any new or strange right. It is not necessary for this court to come to any conclusion on these matters, for it appears to me as a matter of fact that the leaseholder always had possession and control of the kitchens and bathrooms. I should find it difficult to read the new section as meaning that each tenant, being a full tenant, had exclusive occupation of those rooms, though this might seem its possible effect.

In this case I am of opinion the residents had exclusive occupation of their rooms, and the acquiescence of the landlord, the leaseholder, in their exclusion of him constitutes that extra evidence of renunciation by the resident owner or "lessor" which *Kent v. Fittall* requires. In the second of those cases Lord Alverstone said :—

> "If it was established in the case of any particular house, that there had been occasions when the conduct of the tenant was such that any reasonable landlord living in the house would have interfered, or would have attempted to exercise control, and had not done so, the revising barrister would be justified in that state of facts in drawing the conclusion that the landlord had given up his right of control."

Ordinance No. 10 of 1949, that is the new section 18A, requires me to consider this holding as unaffected by the rights the residents had in common, even though it does not exactly define these rights. The owner's possession and control of these parts continued.

All this applies to the residents in the house prior to The Phik Ho's departure. Since then the numbers of the rooms of some tenants have been changed, but there is nothing to show that this was not a change of numbering, and that it was accompanied by any surrender of their separate holdings. As regards the newcomers, however, there is no evidence of the owner's grant of any tenancy or other right. It would seem, but it is not proved that these persons were admitted by Corera, but there is before me neither proper proof of this fact, nor of any authority in Corera which would bind The Phik Ho, and still less the plaintiff here.

In these circumstances then I think that plaintiff is entitled to an order for possession of the rooms formerly occupied by The Phik Ho and of the kitchen and bathroom, and courtyard. The defendants have merely contested the plaintiff's rights and I see no need for the injunction asked. The plaintiff is entitled to a declaration that Rodrigues, Nayyar and Bonamis are not tenants but he is not entitled to any such declaration against the other defendants.

Judgment accordingly.

LEE CHEE HIN AND 2 ORS. v. REX.

**[App. Crim. Juris. (Murray-Aynsley, C.J.)
September 27, 1950]**

[Singapore — Magistrate's Appeal No. 109 of 1950]

Common Gaming Houses Ordinance (Cap. 30), s. 4(c) — Case of a common gaming house and that of a lottery distinguished — Charge — Words "kept" or "used" omitted.

In this case the three appellants were charged that they, on or about the 25th day of February, 1950, at about 9.30 p.m. in a house known as No. 133 Queen Street, Singapore, did assist in the management of that place as a common gaming house, and thereby committed